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Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 705

Case No. 789: HUSSEIN

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 16 March 1994, Hussein Kamel Hussein, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA), filed an application requesting the Tribunal, inter alia, to order:

> "1. Reinstatement of the Applicant to service in the reclassified post of camp services officer, Hama, and considering the period of cessation beginning on 1 March 1992 as special leave with pay.
>
> 2. The Respondent [to] abide by the UN Operational rate of exchange, prevailing on 1 March 1992 for the computation of separation benefits including termination indemnity of the Applicant, and [to] maintain that rate as prevailing for the following periods of service.
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> 3. ... appropriate compensation in light of the injury and loss the Applicant sustained.
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> 4. Payment of secretarial and counselling fees, estimated at US$2,000."

Whereas the Respondent filed his answer on 29 August 1994;

Whereas the Applicant filed written observations on 18 December 1994;

Whereas, on 24 June 1995, the Applicant submitted an additional statement;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 21 December 1977, as a Clerk in the Supply and Transport Department, Damascus Field Office, at the Grade 6 level. On 1 May 1980, the Applicant was promoted to the post of Senior Clerk, at the Grade 8 level. With effect from 15 October 1984, he was transferred to the post of Sub-Area Officer, Hama, and promoted to the Grade 9 level. The Applicant separated from service on early voluntary retirement, with effect from 29 February 1992.

In a letter dated 27 January 1992, the Field Administration Officer, Syrian Arab Republic (SAR), advised the Applicant that his post would be reclassified as Camp Services Officer, at the Grade 10 level, with effect from 1 March 1992. As the Applicant did not meet the qualifications of the new post, - a B.A. in Business or Public Administration and "good knowledge of written and spoken English", - he was declared "provisionally redundant".

The Field Administration Officer offered the Applicant the alternatives of the post of Storekeeper (Fuel Station) in the Damascus Field Office at the Grade 6 level, with grade protection, or early voluntary retirement, with the benefit of an advantageous exchange rate. He requested the Applicant to elect one of these alternatives by 6 February 1992.

In a memorandum to the Area Officer, Hama, dated 30 January 1992, the Applicant requested early voluntary retirement. In a memorandum, dated 6 February 1992, the Applicant asked the Field Administration Officer to transfer him to the 'established post', i.e. his present post. If that was unacceptable, he requested that

his appointment be terminated, with the early voluntary retirement benefit calculated at the favorable exchange rate. Referring to the matter as "a coercive offer," in the same memorandum, the Applicant submitted his resignation. In a letter dated 20 February 1992, the Field Personnel Officer, SAR, advised the Applicant that his request for early voluntary retirement had been approved.

In a memorandum dated 15 April 1992, to the Director of UNRWA Affairs, SAR, the Applicant objected to the reclassification of his post and the alternatives which had been given to him. He requested reinstatement. In a reply dated 17 May 1992, the Field Director advised the Applicant that his request could not be accepted, noting that the Agency had the right to reclassify the post and had offered him an alternative post with grade protection. On 17 May 1992, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 30 September 1993, the JAB adopted its report. Its evaluation, judgement and recommendations read as follows:

> "V. Evaluation and Judgement
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> 24. In its deliberations the Board resolved that while it is the prerogative of the Administration to reclassify any post as an administrative action in the interest of the Agency, the Appellant was given very short notice by letter of the Field Administration Officer dated 27 January 1992 whereby on the one hand the Appellant was declared provisionally redundant and on the other hand he was invited to opt for early voluntary retirement or, if otherwise decided, he would be offered the post of Storekeeper (Fuel Station), Grade 06, at Damascus Field Office with grade protection.
>
> In this regard and though the Board could not establish that the Administration's decision to declare the Appellant provisionally redundant was motivated by prejudice or any other extraneous factors, the Board is of the opinion that the above mentioned sequence of events and offer were conducive to the Appellant's coerced option for early voluntary retirement.
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> VI. Recommendations
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> 25. In view of the foregoing and without prejudice to any further oral or written submissions to any party the

Appellant may deem pertinent, the Board unanimously recommends that the Administration's decision of 27 January 1992 to reclassify the Appellant's post of Sub-Area Officer to Camp Services Officer with effect from 1 March 1992 and to declare the Appellant provisionally redundant be upheld.

However, the Board also wishes to recommend that the Appellant be given an opportunity to reconsider his option for early voluntary retirement with a view to reinstating him in a post commensurate with his qualifications."

On 16 December 1993, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him, inter alia:

"I accept the Board's primary recommendation concerning upholding the decisions to reclassify your former post and to declare you provisionally redundant. As to the Board's further recommendation, there is no evidence whatever that your decision to take early voluntary retirement in preference to the offer of alternative employment made to you, and thereby take advantage of the considerable benefits exceptionally offered by Field Staff Circular No. 17/92 of 5 January 1992, was anything other than your own personal decision made for personal reasons. I therefore do not accept that your decision to take early voluntary retirement was in any way a 'coerced option' as suggested by the Board. Further, you have already been offered re-employment on two separate occasions; the first by way of reinstatement on 3 November 1992, which you declined, and the second, to accommodate you, on 8 February 1993, by way of reappointment, which you also in effect declined by stipulating that your appeal continue. Therefore, having carefully considered the Board's recommendation in this regard, I see no reason to once again re-open the question of your future re-employment with the Agency."

On 16 March 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The declaration of the Applicant as redundant was tainted with prejudice and was a violation of the Staff Regulations and Rules. The Applicant is more qualified for the reclassified post than its incumbent.

2. Changes made in the exchange rates applicable to separation benefits violate the acquired rights of area staff members.

Whereas the Respondent's principal contentions are:

1. The Respondent's decision was proper and in accordance with the rules. The Applicant's contention that it was motivated by bias and prejudice is belied by both the circumstances of the reclassification and the evidence.

2. There was nothing coercive in the offer of voluntary early retirement. The Applicant was paid retirement benefits at the more favorable exchange rates, so even if he had an acquired right to the exchange rate, it was not violated.

The Tribunal, having deliberated from 7 to 28 July 1995, now pronounces the following judgement:

I. The Applicant was made provisionally redundant when his post was reclassified from grade 09 to grade 10. He was given very short notice to decide whether he should take early voluntary retirement or accept a different job "with grade protection". He decided to take early retirement and he received all the money he was entitled to. This could have been the end of the matter.

II. But, as the JAB report shows from its detailed exploration of the background of the case, the Applicant later argued against the reclassification of his post from grade 09 to grade 10. He asserted that he was qualified for the reclassified post, and so should be re-instated in a similar post in his place of residence (Hama area).

III. The JAB concluded that, on the merits, the Administration was within its rights to reclassify the post but that the Applicant should have been offered an alternative post "commensurate with his qualitications". The Respondent did not accept the latter recommendation, arguing that the Applicant had been offered various employment possibilities, but none was acceptable to him. The Respondent maintained that the Applicant had retired for personal reasons and that there was no coercion on him to do so.

IV. Several exchanges took place between the parties, with a view to finding a solution. Included in those exchanges was a lengthy discussion as to what exchange rate should be used to repay the Applicant's separation benefits, if he were to be re-employed. These exchanges produced no solution and are not of relevance to the Tribunal's consideration of the case.

V. The only merit in the claim of the Applicant is that the initial short notice given to him, whereby he was declared provisionally redundant and invited to opt for voluntary retirement, placed him at a disadvantage by requiring him to respond within too short a period of time. This constituted unfair treatment. In view of this, the Applicant is entitled to some compensation, which the Tribunal assesses at three months of his net base salary at the rate in effect at the time of his separation from service.

VI. In view of the above, the Tribunal orders the Respondent to pay the Applicant three months net base salary at the rate in effect on the date of his separation from service.

All other pleas, including the Applicant's request for costs, are rejected.

(Signatures)

Samar SEN
Vice-President, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 28 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary